

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

ASHTON PLASTICS PRODUCTS,  
INC.,

Plaintiff,

vs.

FUSITE CORPORATION,

Defendant.

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\*  
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CIVIL ACTION NO. C-1-02-529

Judge Dlott

(Magistrate Judge Sherman)

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**AFFIDAVIT OF RICHARD E. KELCH**

STATE OF OHIO

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:  
:

SS:

COUNTY OF MONTGOMERY

I, Richard E. Kelch, being first duly cautioned and sworn, deposes and says:

1. I am the President of Plaintiff, Ashton Plastics Products, Inc. (hereinafter "Plaintiff").

2. I have personal knowledge of the matters set forth in this affidavit and am competent to testify thereto in open court.

3. After receiving Defendant, Fusite Corporation's ("Defendant") rejection letter dated October 20, 2003 to Plaintiff's settlement letter, and determining that settlement negotiations were going to be unsuccessful based in large part on Defendant's lack of good faith effort to come to a resolution (as evidenced by Defendant's failure to once make a monetary settlement offer of its own), Plaintiff examined and analyzed its financial condition on whether the business could handle the financial commitment needed to continue prosecuting its claims against Defendant in the above-captioned matter at this time.

4. After Plaintiff's examination and analysis into the financial condition of Plaintiff, it was determined that Plaintiff could not continue to financially pursue its claims against Defendant at this time.

5. Based on Plaintiff's determination that it could not continue to financially pursue its claims against Defendant at this time as a result of Plaintiff's present financial condition and present economic climate, Plaintiff requested this Court to dismiss its claims without prejudice.

6. On or about November 3, 2003, I, on behalf of Plaintiff, contacted via telephone the United States Department of Justice, Antitrust Division (the "DOJ"), located in Cleveland, Ohio to report on Plaintiff's claims that Defendant may be engaging and/or have engaged in unlawful activities that constitute a criminal violation of the applicable antitrust laws.

7. In response to my telephone call of November 3, 2003, Casi Wiseman, a representative of the DOJ, requested that Plaintiff send the DOJ relevant documentation which may support Plaintiff's claims.

8. I, on behalf of Plaintiff, complied with Casi Wiseman's and the DOJ's request and sent the DOJ at its office in Cleveland, Ohio the requested documentation.

9. The documentation sent to the DOJ's office in Cleveland, Ohio was documentation Plaintiff had in its possession prior to its filing of its original Complaint in this matter. Included in the documents forwarded on to the DOJ's office is the documentation attached hereto as **Exhibit A**, which support Plaintiff's claims that Defendant was engaging in the unlawful tying of products. After years of being unable to bid for Bristol Compressors, Bristol stated in writing that it would not consider bids for terminal blocks because Defendant had tied sale of these blocks to the sale of glass to metal seals, the market for which Defendant effectively controlled.

10. On December 30, 2003, I contacted the DOJ's office in Cleveland, Ohio to determine whether, based on the information and documentation provided by Plaintiff, the DOJ was going to continue its criminal investigation of Defendant.

11. In response to my inquiry of December 30, 2003, Theresa Majkruak, an attorney with the DOJ's office in Cleveland, Ohio, advised me that the file had been reviewed and forwarded to the DOJ's Washington D.C. office for further action.


12. On or about November 3, 2003, I contacted the Ohio Attorney General's office to report on claims that Defendant may be engaging in or had engaged in unfair and deceptive trade practices by representing its HVAC compressor terminal blocks were manufactured by "UL recognized" suppliers when, in fact, such HVAC compressor terminal blocks were not manufactured by "UL recognized" suppliers.

13. In response, the Ohio Attorney General's office requested that relevant documentation relating to the claimed unfair and deceptive trade practices be forwarded to its office for review and analysis.


14. In response to the Ohio Attorney General office's request, I, on behalf of Plaintiff, forwarded to the Ohio Attorney General's office, the requested documentation.

15. The documentation sent to the Ohio Attorney General's office was documentation Plaintiff had in its possession and/or had access to prior to its filing of its original Complaint in this matter. Included in the documents forwarded on to the Ohio Attorney General's office is the documentation attached hereto as **Exhibit B**, which support Plaintiff's claims that Defendant was engaging in unfair and deceptive trade practices. Defendant represents that its terminal blocks are, at times relevant, UL recognized. Defendant, however, buys terminal blocks from Chinese sources which are not UL recognized manufacturers. In contrast, Copeland Corporation and Trane Company, both purchasers of terminal blocks from Defendant, requires their suppliers of terminal blocks to be UL recognized suppliers. The documentation attached as **Exhibit B** shows what Defendant is not a UL recognized supplier of terminal blocks. If Defendant was UL recognized for its terminal blocks, in the subcolumn labeled "Category Name" listed would be "Fabricated Parts – Components". On this basis, Plaintiff believes Defendant is engaging in unfair and deceptive trade practices.

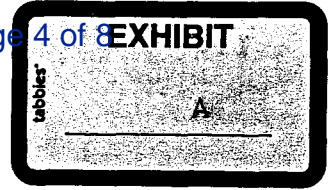
FURTHER AFFIANT SAYETH NAUGHT.

  
Richard E. Kelch

Sworn to and subscribed in my presence by Richard E. Kelch this 2<sup>nd</sup> day of January, 2004.

  
NOTARY PUBLIC

SAMANTHA J. STEINKAMP, Notary Public  
In and for the State of Ohio  
My Commission Expires Feb. 9, 2005



Post-It® Fax Note	7671	Date	11/21/01	# of pages	1
To	DICK KELCH	From	DAN OLIVE		
Co./Dept.	APP	Co.	CSA		

**Bristol**   
compressors

November 8, 2001

Post-It® Fax Note	7671	Date	11/18/01	# of pages	1
To	DICK KELCH	From	DAN OLIVE		
Co./Dept.	APP	Co.	CSA		

Mr. Dan Olive  
Component Sales Associates, Inc.  
5389 Pioneer Drive  
Cincinnati, OH 45247

cc: Frank Ramsey

Mr. Olive:

I am in receipt of your letter dated October 28, 2001. Bristol Compressors does appreciate your interest in becoming a business partner, however, at this time it is not feasible for us to pursue this endeavor. Your pricing does reflect a slight decrease over my current cost, but this decrease is not significant enough to justify the resources that the Engineering, Purchasing, and Quality Assurance departments would have to expend to make the change over. Also, my current supplier of these components supplies Bristol with several other items, and the pricing on these items is based on the entire package being kept with them.

Again, I do appreciate your interest.

Regards,

*Lina Johnson*

Lina Johnson  
Supply Chain Specialist

Enclosure

DICK - (HABLE ESPAÑOL?)  
SO MUCH FOR BRISTOL.  
AT LEAST SHE HAS FINALLY  
RESPONDED.

HAS THERE BEEN ANY COM-  
MUNICATION FROM ERMCO  
SINCE WE LAST TALKED?  
IF NOT, I WILL CALL ED.

CALL ME. I'LL BE ON THE  
ROAD IN A FEW HOURS.

*Dan*





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FUSITE, DIV OF EMERSON ELECTRIC CO	Specialty Refrigeration Equipment Certified for Canada - Component	<b><u>SROT8.SA3716</u></b>

[Previous Page](#)

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### Specialty Refrigeration Equipment Certified for Canada - Component

[Page Bottom](#)

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[Previous Page](#)

---

### Specialty Refrigeration Equipment Certified for Canada - Component

#### Guide Information

**FUSITE, DIV OF  
EMERSON ELECTRIC CO**  
6000 FERNVIEW AVE  
CINCINNATI, OH 45212 USA

SA3716


Hermetic refrigerant motor compressor terminal assemblies, Models HP , JP .

Model PP .

Model PS-12 .

Models GT , UR .

Model URH .

Marking: Company name and model designation on part or fiber washer or wire connector attached to pins or on the shipping cartons and Recognized Component Mark for Canada 

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[Page Top](#)

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[Previous Page](#)

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**SROT2.SA3716**

### Specialty Refrigeration Equipment - Component

[Page Bottom](#)

[Questions?](#)

[Previous Page](#)

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SA3716

Hermetic refrigerant motor compressor terminal assemblies, Models HP, JP.

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Model PS-12.

Models GT, UR.

Model URH.

Marking: Company name and model designation on part or fiber washer or wire connector attached to pins or on the shipping cartons.

[Page Top](#)

[Notice of Disclaimer](#)

[Questions?](#)

[Previous Page](#)

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